

PD-0928-20

**IN THE  
COURT OF CRIMINAL APPEALS  
SITTING AT AUSTIN, TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
4/20/2021  
DEANA WILLIAMSON, CLERK

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IJAH IWASEY BALTIMORE,

*PETITIONER*

V.

THE STATE OF TEXAS

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ON REVIEW FROM THE TENTH COURT OF APPEALS  
No. 10-19-00196-CR  
AN APPEAL OF A CONVICTION IN CAUSE NO. 2017-449-C2  
FROM THE 54TH JUDICIAL DISTRICT COURT OF  
MCLENNAN COUNTY, TEXAS

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**STATE'S BRIEF**

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**ORAL ARGUMENT GRANTED**

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## **Statement of the Case**

Petitioner, IJAH IWASEY BALTIMORE, was charged by indictment with UNLAWFUL CARRYING OF A WEAPON ON A LICENSED PREMISES as proscribed by Section 46.02 of the Texas Penal Code. This offense was alleged to have been committed on or about the 25<sup>th</sup> day of November, 2016, in McLennan County, Texas. 1 CR 5.

Petitioner pled not guilty to the charge alleged in the indictment. 5 RR 162. Jury selection was conducted on June 10, 2019. A jury trial as to guilt/innocence and punishment was conducted, beginning and ending June 11<sup>th</sup>, 2019 with a verdict of guilty. Punishment was assessed by the jury at four years imprisonment in the Texas Department of Criminal Justice – Institutional Division and no fine and the jury recommended that Petitioner be placed on probation. 1 CR 68.

Appellant's sole point of error on appeal was whether the evidence was insufficient to prove the aggravating factor that the offense was committed on a licensed premises, specifically, whether the State proved

that the parking lot of the bar was part of the premises under the Texas Alcoholic Beverage Code Section 11.49(a). The Tenth Court of Appeals affirmed in a published opinion on August 26, 2020. *Baltimore v. State*, 608 S.W.3d 864 (Tex. App.—Waco 2020, pet. granted).

### **Statement Regarding Oral Argument**

In granting the petition for review in this case this Court stated that oral argument will be permitted. The State requests to present argument to this Court if this Honorable Court still desires oral argument.

## Issues Presented

### *Petitioner's Issues Presented*<sup>1</sup>:

1. Whether the State must offer proof of the parameters of a licensed premises to secure a conviction for unlawful carrying of a weapon on a licensed premises.
2. Whether the Alcoholic Beverage Code 11.49(a) definition of “premises” applies to the Penal Code Section 46.02 which contains its own definition of the term “premises”.
3. Whether a parking lot in front of a licensed premises is included within the “premises” under section 11.49(a) of the Alcoholic Beverage Code as a matter of law.

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<sup>1</sup> The Petition for Discretionary Review in this case only listed a single ground for review, which is Petitioner's first ground listed in their brief. Additionally, Petitioner's argument section of their brief only includes the first ground for review and discusses grounds two and three as part of the first ground.



## **Summary of Argument**

The evidence in this case is legally sufficient to support the jury's finding that Appellant committed the offense on a premises licensed or issued a permit by this state to sell alcoholic beverages. All of the witnesses identified the parking lot as belonging to the Crying Shame. The photographic evidence in this case shows that the location of the offense was a few feet from the front door to the Crying Shame, without any separation. The detective testified that the parking lot where the offense occurred was part of the premises of the Crying Shame, which was licensed to sell alcoholic beverages by this state.

The statute is not explicit as to which definition of "premises" applies to this offense. The requirement of a license or permit issued by this state would imply that the statutory scheme provided for such a license or permit would be implicated in this offense. However, the definition used in the jury charge in this case was similar to the common usage, and this Court's previous use of the term in another situation involving Section 46.02 has interpreted the term "premises" broadly to include residential

and business real property. Because either definition, when applied to the facts of this case would lead to the same outcome, a finding of sufficiency of the evidence, this Court should dismiss this petition as improvidently granted. If this Court should decide to issue an opinion in this case it should affirm the Court of Appeals' opinion.

## **Statement of Facts**

Appellant was convicted of unlawfully carrying a weapon (firearm) on a premise that is licensed or issued a permit by this state for the sale of alcoholic beverages. 1 CR 71. Davina Cook testified as the State's first witness. 6 CR 9. She testified that she was out drinking with her cousin and a guy that she was seeing, James "Ty" Johnson at Chapter 11. 6 CR 11. Ty left and went to Crying Shame and Davina went over there as well. 6 RR 12. Crying Shame is a bar in Waco, McLennan County, Texas. 6 RR 12. When Davina arrived, Ty was finishing a drink and eating popcorn. 6 RR 12. They were getting ready to leave because the bar had cut the lights on. 6 RR 13. When she left the bar, she saw Appellant sitting on a motorcycle and he was staring at her, Ty, and her cousin. 6 RR 13. Ty pulled over to where Appellant was and Appellant got off the motorcycle. 6 RR 14. Ty pulled up by the doors to the bar, about a spot or two in between where Appellant was parked at. 6 RR 17. Appellant got off his motorcycle and put his hands in his jacket. 6 RR 17. The door that Ty pulled up to is the door you walk out of and into the bar. 6 RR 18. Appellant was the only person

out of his vehicle or off his motorcycle. 6 RR 19. Ty attempted to back up slowly but Appellant stuck his foot by the tire. 6 RR 19. Appellant told Ty he was about to run over his foot and Davina told Ty that Appellant's foot was under the tire so Ty pulled the car slowly forward so Appellant could move his foot. 6 RR 20.

Davina could see Appellant reach in his pocket and saw the gun get hung up on the jacket when Appellant was pulling it out. 6 RR 20. Appellant then pulled out the gun and stuck it in Ty's face and said, "Bitch, I'm tired of you playing with me." 6 RR 20. This all took place in the parking lot of the Crying Shame. 6 RR 21. This was on the property of the Crying Shame. 6 RR 21. In the front of the Crying Shame. 6 RR 21. Davina's cousin pushed her out of the way and grabbed Appellant's arm and stuck his arm down and pinned Appellant against Ty's car. 6 RR 22. Her cousin fought Appellant for control over the gun and her cousin pistol-whipped Appellant with his own gun. 6 RR 22. Her cousin then threw the gun on the roof of the Crying Shame. 6 RR 22. Davina identified State's Exhibits 7 and 8 as depicting Appellant's motorcycle positioned in front of the building. 6

RR 31. State's Exhibits 7 and 8 were admitted without objection. 6 RR 33.

The exhibits show Appellant's motorcycle directly in front of the Crying Shame. 6 RR 34.

Officer Billy Gann with Waco P.D. was the State's second witness. 6 RR 37. On November 25, 2016 he got a call to respond to the Crying Shame. 6 RR 39. The Crying Shame is a bar in McLennan County. 6 RR 40. The call was for a disturbance involving a fight and one of the individuals had a gun. 6 RR 40. When he arrived, there were three black males standing on the sidewalk in front of and just to the left of the door. 6 RR 40. He determined that there was an altercation outside of the bar and one of the subjects pulled a handgun out of his jacket and the gun was thrown on top of the building. 6 RR 41. The altercation where Appellant pointed a gun at Ty Johnson all happened in the parking lot of the Crying Shame. 6 RR 43. Crying Shame is a bar licensed to sell alcohol through TABC. 6 RR 44.

James "Ty" Johnson was the State's next witness. 6 RR 47. While at the Crying Shame he saw Appellant. 6 RR 49. When left the Crying Shame Appellant was sitting at the front of the parking lot on his motorcycle. 6 RR

50. This was the parking lot of the Crying Shame. 6 RR 50. He saw Appellant get off his motorcycle and approach him at the window of his car. 6 RR 51. Appellant then took out a handgun and pointed it at Ty. 6 RR 51. Davina's cousin, Will, approached the car and Appellant and Will started tussling over the gun. 6 RR 51-52. Ty got out of the car and started fighting with Appellant as well. 6 RR 52. After Ty and Will got the gun away from Appellant, Appellant was still trying to fight with them to get the gun back. 6 RR 52. The whole tussle took place in the parking lot of the Crying Shame, a bar in McLennan County. 6 RR 52. When Ty left the bar Appellant's motorcycle was backed in right in front of the door at the Crying Shame and Appellant was sitting on the bike. 6 RR 56.

Brandon Garrett with Waco P.D. was the next witness for the State. 6 RR 66. He testified that the Crying Shame is a bar in McLennan County that is licensed to sell alcohol by the State of Texas and TABC. 6 RR 69. He responded to a call that there was a weapon being possibly involved at the bar. 6 RR 70. When he arrived, the subjects involved in the altercation were outside. 6 RR 71. He learned that the weapon was on the roof of the bar. 6

RR 72. The fire department came to the scene and he used their ladder to go on the roof to recover the firearm. 6 RR 73. Officer Garrett identified the handgun that he found on the roof of the Crying Shame. 6 RR 75. The firearm was loaded with a round in the chamber. 6 RR 75. He identified the serial number for the firearm. 6 RR 78. Appellant did not own or work at the Crying Shame so the property or premises was not under his control. 6 RR 87.

Detective Joe Williams testified about the firearm found on the roof was owned by Appellant based on the ATF report when he ran the firearm serial number. 6 RR 94. He further testified that the Crying Shame is a bar in McLennan County, licensed to sell alcohol by the TABC. 6 RR 97. He testified, without objection, that the parking lot is included as part of the premises of the Crying Shame. 6 RR 97.

Appellant testified during the defense's case in chief. 6 RR 102. He identified the motorcycle parked outside of the Crying Shame as his motorcycle. 6 RR 103. Appellant confirmed the testimony of Ty Johnson regarding a previous incident a couple months before this offense. 6 RR

105. He confirmed that he saw them earlier at Chapter 11. 6 RR 106.

Appellant admitted that the gun in State's Exhibit 1 is his firearm. 6 RR 107.

Appellant claimed that he never saw Ty Johnson at the Crying Shame until

he was blind sided by them. 6 RR 110. Appellant claimed that they

approached him on his motorcycle. 6 RR 110. Appellant claimed they then

hit him and a fist fight broke out. 6 RR 110. Appellant claimed the fight

started right at the location of his motorcycle. 6 RR 112-113. Appellant

claimed that the firearm started to drop on the ground during the fight and

he just went to adjust it. 6 RR 113.



## Argument

**Issue 1 The State presented sufficient evidence that the parking lot of the Crying Shame was part of the premises licensed to sell alcohol**

### LAW

We review a challenge to the sufficiency of the evidence under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Polk v. State*, 337 S.W.3d 286, 288–89 (Tex. App.—Eastland 2010, pet. ref’d). Under the Jackson standard, we review all the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010).

When conducting a sufficiency review, we consider all the evidence submitted at trial, including pieces of evidence that the trial court may have improperly admitted. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We defer to the factfinder's role as the sole judge of the witnesses' credibility and the weight their testimony is to be afforded. *Brooks*, 323 S.W.3d at 899.

This standard accounts for the factfinder's duty to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319; *Clayton*, 235 S.W.3d at 778.

We measure the sufficiency of the evidence by the elements of the offense as defined in a hypothetically correct jury charge for the case. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). A hypothetically correct jury charge is one that “accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.” *Id.*

### ***Elements of Unlawful Carrying of a Weapon***

When evidentiary sufficiency turns on the meaning of a statute, we must resort to statutory interpretation, which is a question of law that we review de novo. *Lopez v. State*, 600 S.W.3d 43, 45 (Tex. Crim. App. 2020).

“Statutory construction depends on the plain meaning of the statute's language unless it is ambiguous or the plain meaning would lead to absurd

results that the legislature could not have possibly intended.” *Id.* To determine plain meaning, we read the statute in context and give effect to each word, phrase, clause, and sentence if reasonably possible, and we construe them “according to any applicable technical definitions and otherwise according to the rules of grammar and common usage.” *Id.* If the plain meaning is not ambiguous and does not lead to absurd results, we do not consider extratextual factors. *Id.*

A person commits an offense if the person: (1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun; and (2) is not: (A) on the person's own premises or premises under the person's control; or (B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control. Tex. Pen. Code Ann. § 46.02. Further, an offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages. Tex. Pen. Code Ann. § 46.02(c).

## ARGUMENT

Petitioner's argument involves two things. First, what is the definition of a premises licensed or issued a permit by this state for the sale of alcoholic beverages, and second, was the evidence sufficient to show that the parking lot was part of the premises in this case. Petitioner does not challenge the sufficiency of the evidence to support the underlying offense of misdemeanor unlawful carrying of a weapon.

The trial court instructed the jury regarding the definition of premises in accordance with the Section 11.49(a) of the Alcoholic Beverage Code. See Tex. Alco. Bev. Code Ann. § 11.49(a)(In this code, "premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person). Petitioner never challenged this definition of premises at the trial court or on appeal before the Tenth Court of Appeals. See *Baltimore*, 608 S.W.3d at 867 fn2 (stating that no challenge was made to the instruction given to the jury).

Petitioner's first subpoint discusses the differing definitions of premises under Section 11.49(a) of the Alcoholic Beverage Code and Section 46.02(a-2) of the Penal Code. Pet. Br. at 14-15. However, the definition of premises under Section 46.02(a-2) is simply inapplicable to the aggravating factor under Section 46.02(c). The definition under subsection (a-2) appears to be tied to the exception to the offense listed under subsection (a)(2)(A). Additionally, subsection (a-2) is not actually a definition of the term premises, rather, it expands the meaning of the term by stating that "premises" includes real property and a recreational vehicle that is being used as living quarters... Tex. Pen. Code Ann. § 46.02(a-2). That subsection does not limit the term premises to only real property and a recreation vehicle being used as living quarters. Petitioner's suggestion that subsection (a-2) be the applicable definition when construing subsection (c) would simply lead to an absurdity. We give effect to the plain meaning of the statutory text unless the "application of a statute's plain language would lead to absurd consequences that the Legislature could not possibly have intended[.]" *Ex parte Noyola*, 215 S.W.3d 862, 866

(Tex. Crim. App. 2007) (quoting *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)). Petitioner's suggested use of the language of subsection (a-2) would effectively exclude every business that is licensed to sell alcohol across the State of Texas. Only if the business was also being used as living quarters would it then qualify under that definition.

Although the Penal Code does not explicitly reference the Alcoholic Beverage Code in Section 46.02, the language of the subsection (c) necessarily implicates the Alcoholic Beverage Code. Subsection (c) requires that the premises be licensed or issued a permit by this state for the sale of alcoholic beverages. Tex. Pen. Code Ann. § 46.02(c). The license and permit process and authority is governed by Title 3 of the Texas Alcoholic Beverage Code. Therefore, if the license or permit must be issued by this state under 46.02(c), and this state issues the license or permit under Title 3 of the Texas Alcoholic Beverage Code, then Section 46.02(c) would implicate the license and permit scheme under the Texas Alcoholic Beverage Code in determining if the premises was licensed or issued a permit by the State.

The other alternative would be to decide that there is no statutory definition of the term “premises” in Section 46.02(c). This Court has discussed the term “premises” under Section 46.02(a)(2)(A). See *Chiarini v. State*, 442 S.W.3d 318, 320 (Tex. Crim. App. 2014). In *Chiarini*, this Court decided that the common area in a condominium complex was part of the petitioner’s own premises because of his 1/180<sup>th</sup> ownership interest in the common area. *Id.* at 322–323. This Court found that “the word “premises” in the UCW statute has been broadly construed to include both residential and business property.” *Id.* at 320. This Court’s broad reading of the term “premises” in relationship to subsection (a)(2)(A), should also apply to the term premises under subsection (c). Additionally, in the context of premises liability and premises defect cases, “Premises” has been defined as a “[l]and with its appurtenances and structures thereon” or a building, its parts, the area around the building, the grounds, and appurtenances. *City of Houston v. Rushing*, 7 S.W.3d 909, 915 (Tex. App.—Houston [1st Dist.] 1999, pet. denied); *Cobb v. Tex. Dep’t of Criminal Justice*, 965 S.W.2d 59,

62 (Tex. App.—Houston [1st Dist.] 1998, no pet.); *Billstrom v. Mem'l Med. Ctr.*, 598 S.W.2d 642, 646 (Tex. Civ. App.—Corpus Christi 1980, no writ).

Comparing the definition contained within Section 11.49(a) and the common meaning as found in the civil context, there is little to no practical difference in the definition. Both include the grounds and all buildings and appurtenances on the grounds. Because the definition in Section 11.49(a) is functionally the same as the common meaning, it does not affect the outcome of a legal sufficiency review in this case.

### *The evidence is legally sufficient*

The evidence in this case was sufficient to support the jury's finding that Petitioner committed the offense on a premises licensed or issued a permit by this state. The testimony included the following evidence that the location of the offense was on the premises of the Crying Shame Bar:

- Ty pulled up by the doors to the bar, about a spot or two in between where Appellant was parked at. 6 RR 17.
- The door was the door you walk out of and into the bar. 6 RR 18.
- This all took place in the parking lot of the Crying Shame. 6 RR 21.
- This was on the property of the Crying Shame. 6 RR 21.
- In the front of the Crying Shame. 6 RR 21.



- Her cousin then threw the gun on the roof of the Crying Shame. 6 RR 22.
- State's Exhibits 7 and 8 as depicting Appellant's motorcycle positioned in front of the building. 6 RR 31.
- The Crying Shame is a bar in McLennan County. 6 RR 40.
- The altercation where Appellant pointed a gun at Ty Johnson all happened in the parking lot of the Crying Shame. 6 RR 43.
- Crying Shame is a bar licensed to sell alcohol through TABC. 6 RR 44.
- Appellant was sitting at the front of the parking lot on his motorcycle. 6 RR 50.
- This was the parking lot of the Crying Shame. 6 RR 50.
- The whole tussle took place in the parking lot of the Crying Shame, a bar in McLennan County. 6 RR 52.
- When Ty left the bar Appellant's motorcycle was backed in right in front of the door at the Crying Shame and Appellant was sitting on the bike. 6 RR 56.
- The Crying Shame is a bar in McLennan County that is licensed to sell alcohol by the State of Texas and TABC. 6 RR 69.
- Officer Garrett identified the handgun that he found on the roof of the Crying Shame. 6 RR 75.
- The Crying Shame is a bar in McLennan County, licensed to sell alcohol by the TABC. 6 RR 97.
- The parking lot is included as part of the premises of the Crying Shame. 6 RR 97.
- The proprietors or the owners of the Crying Shame actually locked everybody else inside to keep them from coming outside, to help with the scene. 6 RR 71.

The testimony from multiple witnesses identified the parking lot as belonging to the Crying Shame. The witnesses were at the scene during at the time of the offense. The fact that the witnesses were able to observe the

property—the bar and parking lot—supports their testimony regarding their observations of the parking lot belonging to the Crying Shame.

Additionally, the fact that a person involved in the “tussle” was able to throw the gun on top of the building also supports the jury’s verdict that the offense occurred on the premises of the Crying Shame. The detective testified that the parking lot was part of the premises of the Crying Shame. All of the witnesses identified the parking lot as being the parking lot of the Crying Shame. As the Tenth Court of Appeals noted, this testimony was uncontroverted. This testimony was sufficient for the jury to find that the parking lot was part of the grounds of the Crying Shame. All the witnesses testified that it was the Crying Shame’s parking lot, was part of the property of the Crying Shame, or was included in the premises of the Crying Shame.

Additionally, the fact that the management and owners of the Crying Shame locked people inside of the building in order to help control the scene is additional evidence that the Crying Shame exercised control over the parking lot.

***The Tenth Court of Appeals opinion does not expand Section 46.02***

Petitioner argues that “As a practical matter, Baltimore reads the Waco court opinion as holding that a person cannot carry a handgun inside of or directly en route to their motor vehicle if the vehicle is in a parking lot merely near an establishment licensed to sell alcoholic beverages”. Pet. Br. at 21. Petitioner’s reading of the lower court opinion is simply incorrect. First, Petitioner did not challenge the sufficiency of the evidence regarding the exception under Section 46.02(a)(2)(B). Whether Petitioner was inside of or directly en route to his motor vehicle was the main issue at trial. Davila testified that Petitioner got off of his motorcycle and walked over to where Ty was. 6 RR 18. She testified that Petitioner was the only one who left their vehicle. 6 RR 19. Ty Johnson testified that Petitioner got off of his motorcycle and approached him at the window of his car. 6 RR 51. Because the testimony supported the finding that Petitioner was going from his vehicle toward Ty Johnson’s car he was not directly en route to his vehicle. The Tenth Court’s Opinion does not hold otherwise.

## ***Conclusion***

The Tenth Court of Appeals correctly held that the evidence in this case was legally sufficient to support the jury's finding that the offense occurred on a premises licensed or issued a permit by this state to sell alcoholic beverages. Whether this Court views the evidence in accordance with the definition of premises provided in the jury charge, the common meaning, or the broad definition previously used by this Court, the outcome of the analysis remains the same. Because there is no difference in the outcome with the alternate definitions, this Court should dismiss this case as improvidently granted. Alternatively, this Court should affirm the Tenth Court of Appeal's decision.

## **Prayer**

For the foregoing reasons, the State of Texas prays that this Honorable Court either dismiss this case as improvidently granted or affirm the court of appeals' decision affirming the conviction and punishment of IJAH IWASEY BALTIMORE and prays for such other and further relief as may be provided by law.

Respectfully Submitted:

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### **Certificate of Service**

I certify that I caused to be served a true and correct copy of this State's Brief by eservice or email on Petitioner's attorney of record at

[Jessi@Freudlaw.com](mailto:Jessi@Freudlaw.com) and the State Prosecuting Attorney at  
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DATE: 04/19/2021

/s/Gabriel C. Price\_\_\_\_\_

GABRIEL C. PRICE

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